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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th February 2008

No. 1753—li/21-1/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd February 2008 in Industrial Dispute Case No. 10 of 2001 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of District Transport Manager (Admn.), O.S.R.T.C., Dhenkanal and its workman Shri Laxman Sahu was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE Misc. CASE No. 10 of 2001

Dated the 2nd February 2008

Present :

Shri Srikanta Nayak, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

Shri Laxman Sahu .. Complainant—Workman
S/o Shri Bhramar Sahu
Village Bangurisinghi, P. O. Hindol Road
P. S. Mutunga, Dist. Dhenkanal.

And

District Transport Manager (Admn.) .. Opposite Party—Management
O.S.R.T.C., Dhenkanal.

Appearances :

For the Complainant—Workman	..	Shri M. C. Sahu Authorised representatives
For the Opposite Party—Management	..	Shri D. Adhikari, Labour Welfare Officer

AWARD

This is a petition filed by the complainant (hereinafter referred to as the ‘workman’) under Section 33-A of the Industrial Disputes Act, 1947.

2. The case of the workman is that he was serving as a Vehicle Servicing Staff till the 31st August 2001 and on that date his service was terminated. The O.S.R.T.C. is a Statutory Corporation. The O.S.R.T.C. Staff Federation raised an Industrial Dispute concerning D. A. which was registered as Industrial Dispute Case No. 40 of 1996 and the same is pending. Similarly, the State Transport Employees Federation instituted Industrial Dispute Case No. 103 of 1995 and he is a concerned workman in both the Industrial Dispute Cases. So, the act of the management in dismissing him from service without taking permission is illegal. Before terminating his service no disciplinary proceeding was instituted against him nor he was given any opportunity to place his case. So, the action of the management is illegal and he has prayed to set aside the same and to reinstate him in service with full back wages.

3. The case of the opposite party (hereinafter referred to as the ‘Management’) is that the workman has nothing to do so far as Industrial Dispute Case No. 40 of 1996 and 103 of 1995 are concerned and the disputes of those cases do not relate to this case in any way. The workman remained absent without applying for leave. So, after observing due procedure the disciplinary authority terminated his service. As the workman was not a concerned workman in any industrial dispute case, no permission was required. So, no application under Section 33 (2)(b) of the Industrial Dispute Act was filed. The petition under Section 33-A is not maintainable.

4. On the aforesaid pleadings of the parties, the following issues were framed :—

ISSUES

- (i) “Whether the action of the management in dismissing the workman from service is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?”

5. The workman examined two witness in support of his case and the management examined none.

6. *Issue Nos. (i) and (ii)*—In a proceeding under Section 33-A the power of the Industrial Tribunal is limited one and in order to entitle the workman the protection under Section 33-A

it has to be proved that there should be pendency of any Industrial Dispute and the workman claimed protection as a concerned workman in the dispute pending and the act in question changed the service conditions and such alteration should be in regard to any matter connected with the pending dispute. In the decision reported in 1978 (II) LLJ (S.C.) Page-1 (M/s. Punjab Beverages Vrs. Suresh Chand), their Lordships held that "the first issue which is required to be decided in a complaint filed by the aggrieved workman under Section 33-A is whether the order of discharge or dismissal made by the employer is in contravention of Section 33. If the contravention of Section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merit."

7. W. W. No. 1 disposed that he was a member of the Dhenkanal Union and playing contribution to it. Industrial Dispute Case No. 40 of 1996 was pending in the Tribunal which was raised by the O.R.T. Staff Federation for granting of D. A. and he was connected with that issue. W. W. No. 2 deposed that the decision in Industrial Dispute Case No. 40 of 1996 will bind all the employees including the present workman and the present workman is a member of Dhenkanal Rajya Sadak Paribahan Sangha. The version of W.Ws. 1 and 2 reveal that the workman is a member of Dhenkanal Rajya Sadak Paribahan Karmachari Sangha but he is not a member of O.R.T. Staff Federation or the Employees Federation. Admittedly, the Union to which the workman belongs had not raised any Industrial Dispute. In Civil Appeal No. 15606 of 1996 arising out of SLP(C) No. 471 of 1992 between the District Transport Manager (Admn.), O.S.R.T.C., Orissa and Dilip Kumar Nayak and another, the Hon'ble Supreme Court have held that for efficient transaction of the business and co-ordinated services of the transport operations, several zones have been created by the Corporation and each zone is independent of its operational efficacy. Therefore, all the zones are not an integral part or parcel of co-ordinated transport service as a single unit. In these circumstances, the decision of the High Court that all the zones would be considered to be an integral unit of the Corporation and pendency of Industrial Dispute in respect of one employee of a different zones, would a bar for the management to take disciplinary action against an employee in that particular zone is clearly wrong. We are of the opinion that in such a case there is no need for the management to seek and obtain leave of the Industrial Tribunal under Section 33-A of the Act."

In the case in hand since the O.R.T. Staff Federation instituted Industrial Dispute Case No. 40 of 1996 and the State Transport Employees Federation instituted Industrial Dispute Case No. 103 of 1995 but not the Union to which the workman belongs, it can be said that no Industrial Dispute was pending while terminating the services of the workman and as such, the present application under Section 33-A is not maintainable.

8. Coming to the merit of the case, W.W. No. 1 deposed that he was dismissed from service on the 31st August 2001 and Ext. 1 is the dismissal order and ext. 2 is the relieve order. No proceeding was instituted against him and he was on leave from the 28th April 2001 to the 17th August 2001 and Ext. 3 is the Medical Certificate. W.W. No. 2 has not

uttered a single word on this point. Ext 1 is the office order which reveals that the workman remained absent unauthorisedly without applying for leave and he was also called upon to explain and the workman admitted his absence but took the plea that he had submitted the application but the office record reveals that he had not applied for leave. Admittedly, no proceeding was initiated nor the workman was heard and permitted to place his case. So, terminating his service without holding an enquiry is against the principles of natural justice but the workman is not entitled to any relief in view of the fact that the present application is not maintainable as no dispute was pending adjudication while terminating the services of the workman.

Issue Nos. (i) and (ii) are answered accordingly, and the Misc. Case is disposed of.

Dictated and corrected by me.

SRIKANTA NAYAK

2-2-2008

Presiding Officer, Industrial Tribunal
Bhubaneswar

SRIKANTA NAYAK

2-2-2008

Presiding Officer, Industrial Tribunal
Bhubaneswar

By order of the Governor

K. TRIPATHY

Under-Secretary to Government